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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,110	11/14/2003	Clemens Jung	IT20030039	1927

173 7590 05/11/2006

WHIRLPOOL PATENTS COMPANY - MD 0750  
500 RENAISSANCE DRIVE - SUITE 102  
ST. JOSEPH, MI 49085

EXAMINER

EL ARINI, ZEINAB

ART UNIT PAPER NUMBER

1746

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/714,110  
Filing Date: November 14, 2003  
Appellant(s): JUNG ET AL.

**MAILED**  
MAY 11 2006  
**GROUP 1700**

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For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed 04/21/06 appealing from the Office action mailed 11/23/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**GROUND OF REJECTION NOT ON REVIEW**

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. The double patenting rejections have not been on review.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3,888,269	Bashark	06-1975
5,586,567	Smith et al.	12-1996

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

The rejections under 35 U.S.C. 112, second paragraph stated in paper No. 062305 have been withdrawn.

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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2. Claims 12, 2, 8-10, and 13-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/713,305. Although the conflicting claims are not identical, they are not patentably distinct from each other because the process as claimed in both applications is functionally equivalent.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 12, 16-17, and 19-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-8 of copending Application No. 10/713,304. Although the conflicting claims are not identical, they are not patentably distinct from each other because the process as claimed in both applications is functionally equivalent.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 8-10, and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bashark (3,888,269) in combination with Smith et al. (5,586,567).

Bashark discloses control system for dishwasher. The reference discloses that in Patent No. 3,279,481, a turbidity sensor is used to determine the turbidity of the rinse water. See col. 1, lines 60-67. The reference discloses sensing the turbidity of the dish treating liquid after the pump has been operating for a selecting period of time such as after one minute of the first rinse period. See col. 3, lines 3-20, and lines 49-68, and col. 4, lines 1-7, 36-46.

Bashark does not teach the steps and determining the solubility of the soil on the dishes as claimed.

Smith et al. teach a turbidity sensing mechanism for a dishwasher. The reference also discloses the turbidity is a measure of the suspended and/or soluble soils in the fluid. See col. 3, lines 51-52.

It would have been obvious for one skilled in the art to use the process taught by Bashark to obtain the claimed process, because the steps of measuring the turbidity as taught by Bashark will include determining the solubility of the soil as claimed. The steps as claimed are inherent in the Bashark process. This is also because the degree of turbidity depends on the amount of soil been found on the dishes. See Bashark, col. 3, lines 3-20. The turbidity which is a measure of the soluble soil in the liquid depend on the temperature, the time or the duration of the cleaning step, the volume of water, and the quantity of cleaning agent as claimed.

**(10) Response to Argument**

**Appellants argue that nothing in the combination of Bashark or Smith remotely suggests determining the solubility of soil on dishes to be cleaned. Appellants' argument is unpersuasive, because** Smith et al. disclose the turbidity is a measure of the suspended and/or soluble soils in the fluid. See col. 3, lines 51-52, and Bashark discloses that the degree of turbidity depends on the amount of soil been found on the dishes. See Bashark, col. 3, lines 3-20. Appellants' argument with respect to measuring turbidity will not include determining the solubility of the soil, and there is no correlation between turbidity and solubility that can provide a definitive quantification of solubility strictly on the basis of turbidity, is unpersuasive. This is because the degree of turbidity depends on the amount of soil or soluble soil in the liquid. One skilled in the art would measure the solubility of the soil by calculating the amount of soil and the turbidity of the liquid. Bashark also discloses modifying wash and rinse cycles based upon the amount of turbidity which is a measure of soluble soil in the liquid. Appellants' arguments with respect to the limitations of claims 15, 8-10, and 16-20 are unpersuasive, because the turbidity, which is a measure of soluble soil in the liquid, depends on the operating parameters as claimed.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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